

**Before the Department of State
Bureau of Consular Affairs
Washington, D.C.**

**Schedule of Fees for Consular Services,
Department of State and Overseas Embassies and Consulates
75 Fed. Reg. 14111 (March 24, 2010), RIN 1400-AC57 and 1400-AC58,
Docket DOS-2010-0037**

Comments of United Air Lines, Inc. and U.S. Travel Association

United Air Lines, Inc. (“United”) and the U.S. Travel Association (“U.S. Travel”) hereby submit these comments in response to the above-reference Supplemental Notice of Proposed Rulemaking (“SNPRM”) published by Department of State on March 24, 2010. 75 Fed. Reg. 14111. The SNPRM seems to be the Department’s attempt to address earlier comments of United and U.S. Travel¹, as well as those of more than 1,500 others, questioning the Department’s two proposed rules seeking to amend its Schedule of Fees for consular services. *See*, 74 Fed. Reg. 66076 (December 14, 2009) and 75 Fed. Reg. 6321 (February 9, 2010).

United and U.S. Travel appreciate the importance of the Consular Services program, and they are sensitive to the security and border control concerns that the program serves. At the same time, because of the impact that they have on the U.S. travel industry in general and on international airline operations in particular, United and U.S. Travel want to ensure transparency and accountability for taxes and fees levied on the industry and on its customers. United, a member of the Star Alliance, is a major international carrier whose passengers must bear the burden of visa and passport fee increases. And, as an employer, United pays for the U.S. passports for its tens of thousands of crew members, at a cost of hundreds of thousands of dollars a year. U.S. Travel is a non-profit trade organization that represents and speaks for the common interests of the \$770 billion U.S. travel industry, notably in this case, the promotion of inbound international travel to the United States. U.S. Travel promotes increased travel to and within the United States and advocates that the U.S. government balance travel security measures with travel facilitation programs.

After a careful review of the SNPRM, United and U.S. Travel believe that, while the Department has further elaborated on the structure of the Cost of Service Study (“CoSS”) methodology it employed to determine the costs of the various consular services subject to its proposed fee increase, it still has failed to disclose the actual cost and related data (and

¹ United and US Travel jointly filed comments in response to the Department’s December 14, 2009 Notice (74 Fed. Reg. 66076) advising of its intent to increase the processing fees for machine-readable nonimmigrant visa applications and border crossing cards. *See*, Comments of United Air Lines, Inc. and U.S. Travel Association submitted on January 29, 2010. United separately filed comments in response to the Department’s February 9, 2009 Notice (75 Fed. Reg. 6321) seeking primarily to increase certain consular fees or impose new fees for currently free services. *See*, Comments of United Air Lines, Inc. submitted on March 11, 2010.

assumptions) used as inputs to the CoSS, which are at the heart of their concerns. United and U.S. Travel, therefore, request that the Department: (1) suspend the proceedings related to its proposed new fee schedule for certain consular services; (2) release additional data/information supporting its proposed fee increases; and (3) hold a public meeting to directly address questions from the public in addition to the specific questions posed here. With this additional data disclosure, the Department should then restart its proceedings seeking to increase certain fees so that interested parties can enjoy the full benefit of a genuine notice and comment period.

The SNPRM does not provide any further insight into the CoSS relied on by the Department of State for its proposed fee increases.

A rulemaking demands the highest level of government openness. Unfortunately even against the backdrop of the U.S. Government Accountability Office's (GAO's) criticism of the State Department's fee setting for passports² and public comments requesting additional information supporting planned fee increases, the Department has chosen to respond with an SNPRM totally devoid of specific cost data. Rather than providing interested parties a clear accounting of the cost basis for the billions of dollars in proposed annual fees for consular services, notably U.S. passport books and passport cards and non-immigrant visas, the Department (through the SNPRM) further describes the methods it and its contractors used to develop the CoSS upon which millions of dollars in proposed fee increases depends. By so doing, it ignored both the letter and the spirit of the Administrative Procedures Act ("APA"), 5 U.S.C. §553, and President Obama's Memorandum of January 21, 2009 on Transparency and Open Government (see 74 Fed. Reg. 4685, January 26, 2009).

Thus far, the Department of State merely continues to assert the costs for providing fee-based consular services and, now in the SNPRM, provides a description of methodology and some data sources (though only anecdotal data) of the CoSS upon which it made these fee determinations. A description of the methods by which the Department calculated costs is not the same as disclosing the underlying data that supports the charges that the Department proposes to impose for a host of consular services. The SNPRM in no way illuminates whether the charge that the Department intends to levy for even a single one of its fee-generating consular services is equal to its costs to provide that service. In fact, State has even failed to show that the aggregate revenues it expects to receive from fees for consular services are equal to its costs to provide fee-based consular services in the aggregate. Publicly-available data such as State's budget mingle various consular services and shed little light on State's true costs to provide individual consular services, further handicapping the public from understanding the costs of fee-based consular services and Consular Affairs' expenditures, and impairing the quality of regulatory decision-making.

Among the many other questions unanswered by the SNPRM is how State might have assigned certain costs of consular services provided at or by U.S. missions abroad to specific

² See, "State Department: Transparent Cost Estimates Needed to Support Passport Execution Fee Decisions," GAO-08-63 (October 2007).

consular services. As the Department is well aware, the International Cooperative Administrative Support Services (“ICASS”) system is the principal means by which the U.S. Government provides and shares the cost of common administrative support at its hundreds of diplomatic and consular posts abroad, services including building operations, some security, transportation, mail, information systems and personnel management. ICASS is meant to ensure that each agency pays for its own costs abroad, including some headquarters-level services, with charges to each agency to equal the costs of services. *See*, 6 Foreign Affairs Handbook-5 H-011.2 Services.

Public information shows that at least through most of 2009, and therefore through the period of the CoSS, Consular Affairs (“CA”) did not receive an ICASS invoice for overseas support costs separate from billing for the general State program. The same cable states that, “[t]he cost of service data that CA fees are based on already include ICASS costs (including ICASS costs for positions not funded by CA). Because Consular Affairs funds consular positions throughout the Department, CA already pays a significant share of the Department’s ICASS costs. However, to date, CA’s ICASS costs have been imbedded in the State Program (1900.0) ICASS invoice and not separately invoiced.” *See*, Unclassified cable: State 099062; 240004Z; Sep 09, para. 2. Without a separate accounting of which ICASS costs were attributable to consular functions in general, how could State accurately estimate ICASS costs attributable to each fee-based consular service? The public might ask similar questions about other inputs into the CoSS, but lack of readily-available public information impoverishes the quality of response to these proposed fee increases and prevents the Department from enjoying the benefit of such comments.

In its annual budget State makes plain: “The Bureau of Consular Affairs is a fee-funded organization. Retained and non-retained revenues generated by consular services topped \$2.5 billion in FY 2008. The Bureau of Consular Affairs will continue to provide consular services, enhance security and technology and strengthen our visa and passport processes. The Department relies solely on revenue collected from visa and passport applicants for these initiatives. Increased costs in FY 2010 represent providing support to rising consular workloads, increased data collection requirements, mandatory interviews, maintenance costs for our modernized systems and new domestic facility expansion and support.” *See, The Budget in Brief, 2010, Department of State*, at page 57. If the Department relies exclusively on revenues generated by consular services, how does it fund non-fee based services or services for which by its own admission fee collections do not fully defray costs? Given the Department’s reliance on fee collections discussed above, in addition to seeking a suspension of this proceeding and release of additional data, the Department should:

- Provide the inputs and formula used to determine charges for the U.S. passport book and the U.S. passport card, including the differential in security surcharges between the two documents, and explain the basis for the difference in charges for these documents;

- Confirm how the CoSS ensured that ICASS costs were correctly attributed to individual consular services, and that ICASS costs for positions not dedicated to fee-based consular activities were excluded from the CoSS; and
- Confirm whether the CoSS for non-immigrant visas accounted for the transition to the DS-160 online, nonimmigrant visa electronic application that replaces the current nonimmigrant application form DS-156, and certain other related forms. The DS-160 process will presumably reduce the space, personnel, storage and other costs associated with previous paper based nonimmigrant visa applications.

Conclusion

For the foregoing reasons, United and U.S. Travel respectfully urge the Department to: (1) suspend the proceedings related to its proposed new fee schedule for certain consular services; (2) release additional data/information supporting its proposed fee increases; and (3) hold a public meeting to directly address questions from the public in addition to the above-stated questions.

Respectfully submitted,

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